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Comprehensive review of the whole question of peacekeeping operations in all their aspects

Letter dated 24 March 2005 from the Secretary-General to the President of the General Assembly

United Nations peacekeeping operations have for decades brought peace and stability to countries emerging from war. The women and men who serve the blue flag do so under arduous and often dangerous conditions. The history of peacekeeping has been one of distinguished collective accomplishment and personal sacrifice.

However, this exemplary record has been clouded by the unconscionable conduct of a few individuals. In particular, the revelations in 2004 of sexual exploitation and abuse by a significant number of United Nations peacekeeping personnel in the Democratic Republic of the Congo have done great harm to the name of peacekeeping. Such abhorrent acts are a violation of the fundamental duty of care that all United Nations peacekeeping personnel owe to the local population that they are sent to serve.

As the allegations in the Democratic Republic of the Congo surfaced, it became clear that the measures currently in place to address sexual exploitation and abuse in peacekeeping operations were manifestly inadequate and that a fundamental change in approach was needed. I began a process of review to determine the nature and extent of the problem and resolve it. As a first step, in July 2004, I invited His Royal Highness Prince Zeid Ra'ad Zeid Al-Hussein, Permanent Representative of Jordan, to act as my adviser and assist me in addressing the problem of sexual exploitation and abuse by United Nations peacekeeping personnel. As the Permanent Representative of a major troop- and police-contributing country and a former civilian peacekeeper, Prince Zeid has brought a vital perspective to the problem and potential solutions. Thus, when the Special Committee on Peacekeeping Operations, in its 2005 report (A/59/19), requested me to make available a comprehensive report with recommendations on sexual exploitation and abuse by United Nations peacekeeping personnel, I asked Prince Zeid to undertake its preparation. This report I now submit to you. I would be grateful if it could be made available to the members of the General Assembly.

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The report before you represents the first comprehensive analysis of the problem of sexual exploitation and abuse by United Nations peacekeeping personnel. It contains bold recommendations directed at both the Secretariat and Member States. In formulating the recommendations, Prince Zeid drew on extensive consultations with Secretariat officials and representatives of the troop- and police-contributing countries that provide the most military and police personnel, as well as on insights from a visit to the United Nations peacekeeping operation in the Democratic Republic of the Congo from 24 October to 3 November 2004.

I believe that Prince Zeid's analysis is a fair and honest account of a serious problem. I concur fully with all recommendations relating to the report's four main areas of concern:

- The current rules on standards of conduct
- The investigative process
- Organizational, managerial and command responsibility
- Individual disciplinary, financial and criminal accountability

Resolving the problem of sexual exploitation and abuse by United Nations peacekeeping personnel is a shared responsibility and can only succeed with firm commitment and action by both the Secretariat and Member States. We will need to work closely together and chart a common way forward. I undertake to do my utmost to implement the necessary reforms under my purview, which would go far beyond the initial steps that have been taken to raise awareness in peacekeeping operations of United Nations standards of conduct and to enforce them. I also call upon Member States to act with determination and due haste and to provide the necessary resources to the Secretariat and the United Nations agencies, funds and programmes to put in place the important changes required.

The implementation of the report's recommendations will strengthen the ability of peacekeeping operations to promote good conduct and discipline more broadly and increase the accountability of managers and officers in this area. Since the problem of sexual exploitation and abuse is not confined to peacekeeping contexts, the report also offers many innovative ideas that could be applicable to the wider United Nations system.

United Nations peacekeeping is a noble calling and serves as an integral part of the world's efforts to maintain peace and security. Sexual exploitation and abuse by peacekeeping personnel must first be eliminated and then prevented from happening again. I would like to express my sincere thanks and appreciation to Prince Zeid for producing this report, which I trust will be the starting point to drive forward a process of reform that will achieve this goal.

(Signed) Kofi **Annan**

A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations

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Summary

The background of the problem of sexual exploitation and abuse in peacekeeping operations is described in section I of the present report. After the major causes and effects on victims are outlined, the difficulties involved in taking action against alleged perpetrators are described. It is stated that it is now time for the United Nations to take effective action to stop sexual exploitation and abuse.

The problem of sexual exploitation and abuse are dealt with under four main themes. The Organization's rules on the subject are set out in section II and its investigative process is examined in section III. The civil accountability of the Organization and its managers and commanders with respect to taking effective measures to deal with sexual exploitation and abuse is reviewed in section IV, as is the personal accountability of those who violate the rules of the Organization. Criminal accountability is discussed in section V.

Rules of the Organization. It is noted in section II that the difficulty of dealing with sexual exploitation and abuse is compounded by the fact that a peacekeeping operation may have up to five categories of personnel. Those categories are governed by different rules, which are described briefly (see annex for a more detailed description). In particular troop-contributing countries are responsible for the conduct and discipline of their troops. The General Assembly should apply the rules set out in the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) to all categories of United Nations peacekeeping personnel, including civilian police, military observers, members of national contingents, United Nations Volunteers, consultants and individual contractors. In addition, the General Assembly should decide that those standards, as well as those set out in the publications entitled "Ten Rules: Code of Personal Conduct for Blue Helmets" and "We Are United Nations Peacekeepers", be included in each memorandum of understanding signed by the Organization with each troop-contributing country and that the troop-contributing countries be obligated to ensure that they are binding on the military members of their national contingents. The rules should be made readily available to all members of a peacekeeping mission; they should be issued in card form to contingents; and the troop-contributing countries and the Secretary-General should cooperate in publishing them in the languages of the contingents, at United Nations cost.

Investigations of the Organization. In section III, it is pointed out that specialized expertise is required for investigations into allegations of sexual exploitation and abuse. The establishment of a permanent professional investigative mechanism to investigate complex cases of serious misconduct, including sexual exploitation and abuse, is recommended. Furthermore, an expert in military law, preferably a prosecutor, from the troop-contributing country concerned should participate as a member of any investigation of members of its contingent. That will ensure that the investigation gathers evidence in a manner that satisfies the requirements of national law so that further action can be taken if it is concluded that misconduct has occurred. It is also recommended that the memorandum of understanding require the troop-contributing country to share information that it has obtained through its contingent's investigations into the incident. The troop-contributing countries should hold on-site courts martial, since that would facilitate access to witnesses and evidence in the peacekeeping area. Troop-contributing

countries whose legislation does not permit on-site courts martial should consider reforming their legislation.

Organizational, managerial and command accountability. In section IV of the report the accountability of the Organization for peacekeeping operations is examined, as well as its consequent obligation to take reasonable steps to attempt to eliminate the problem of sexual exploitation and abuse by United Nations peacekeeping personnel. The accountability of managers and commanders in implementing the programmes and policies adopted by the Organization is also discussed.

Accountability of the Organization. A series of measures are recommended to help eliminate sexual exploitation and abuse in peacekeeping missions, including extensive training, an effective programme of outreach to the local community, a data collection system to track the investigation and resolution of allegations of sexual exploitation and abuse and the establishment of a few full-time positions at Headquarters and in the field to coordinate action by missions on those issues. Recommendations are also made for mission-specific measures to deal with the problem and measures to help make life in missions less difficult. In addition, the United Nations should make basic assistance available to alleged victims.

Accountability of managers and commanders. It is recommended that the measures to eliminate sexual exploitation and abuse be made part of the performance goals of managers and commanders. Furthermore, managerial performance should be rated in accordance with the actual implementation of those goals. Similar recommendations are made with respect to the assessment by the Force Commander of the performance of contingent commanders and senior officers. Managers and commanders who take effective steps to deal with the problem and who ensure that allegations of sexual exploitation and abuse are properly investigated must be rewarded. Those who fail must be removed.

Individual disciplinary, financial and criminal accountability. The individual accountability of those who violate United Nations prohibitions against sexual exploitation and abuse is examined in section V.

Individual disciplinary accountability. It is recommended that there be strict disciplinary accountability for peacekeeping personnel who violate the Organization's rules against sexual exploitation and abuse. The General Assembly should define acts of sexual exploitation and abuse as serious misconduct within the meaning of the Staff Regulations to emphasize that Member States will not tolerate such abuse. In addition, the General Assembly should request the Secretary-General to introduce expedited procedures to deal with such cases, including suspension without pay when appropriate. It is recommended that the model memorandum of understanding between the United Nations and troop-contributing countries provide that, if a Department of Peacekeeping Operations investigation in which they participate concludes that a member of their contingent committed an act of sexual exploitation and abuse, the country must agree to forward the case to its competent national or military authorities to be considered for prosecution in accordance with its laws and to report the results to the Secretary-General.

Individual financial accountability. It is recommended that United Nations peacekeeping personnel be held financially accountable for harm caused to victims as a result of their acts of sexual exploitation and abuse. In particular, the General

Assembly should authorize the Secretary-General to require DNA and other tests to establish paternity in appropriate cases so as to ensure that peacekeeping personnel can be obligated to provide child support to so-called peacekeeper babies that they father and abandon.

Criminal accountability of military members of national contingents. The model memorandum of understanding should specifically provide that troop-contributing countries must ensure that their contingents are obligated to respect local law. It is noted that the model status-of-forces agreement assumes that the Secretary-General will obtain formal assurances from a troop-contributing country that it will exercise criminal jurisdiction over its troops in return for the immunity conferred upon them by the host State under the terms of the status-of-forces agreement. Such formal assurances are no longer obtained, however. Such clauses should once again be inserted into the model memorandum of understanding to ensure that troop-contributing countries have a legal obligation to consider for prosecution acts of sexual exploitation and abuse committed by military members of peacekeeping missions that constitute crimes under the laws of the troop-contributing country or the host State. The model memorandum of understanding should require the troop-contributing country to report on any action taken by it on cases referred to it as a result of United Nations investigations in which it participated. The General Assembly is requested to decide that acceptance of such procedures constitutes a necessary condition for acceptance of an offer by a troop-contributing country to supply troops to the Organization.

Criminal accountability of United Nations staff and experts on mission. The founders of the United Nations did not intend that the privileges and immunities of officials (staff have the status of officials) and experts on mission (civilian police and military observers have the status of experts on mission) should constitute a shield from national criminal prosecution for crimes committed in a State hosting a United Nations operation. However the absence of a functioning judicial system in some peacekeeping locations means that it is not feasible to waive immunity in those jurisdictions. As a result, the prosecution of staff or experts on mission for crimes committed in such a State depends on whether the State of nationality of the suspect has conferred extraterritorial jurisdiction on its courts to take such action and whether it can, in the circumstances of the case, effectively take such action. But this would tend to be the exception rather than the rule. It is recommended that the Secretary-General appoint a group of experts to advise him as to whether it would be feasible to draft an international instrument or use other means to ensure that United Nations personnel are subject to criminal prosecution for defined crimes of sexual exploitation and abuse. If the group recommended such a course of action, the General Assembly could refer the matter to either the Sixth Committee or to an ad hoc committee of the Assembly specially created for the purpose of elaborating such a text.

I. The problem in context

1. United Nations peacekeeping was conceived soon after the establishment of the Organization to monitor ceasefires and peace agreements, first through the use of unarmed observers and later (1956) supplemented with armed battalions. By 1960, with the establishment of the United Nations Operation in the Congo, United Nations peacekeeping evolved dramatically from monitoring to providing a

substantial array of technical assistance to a Government desperately in need of support. This form of multidimensional peacekeeping was groundbreaking for the Organization. But such was the enormity of the effort expended by the United Nations in the Congo that it was not until 1989, with the formation of the United Nations Transition Assistance Group in Namibia, that this type of peacekeeping was practised again. From that point on, the majority of United Nations peacekeeping operations mounted by the Security Council have undertaken a variety of tasks beyond monitoring.

2. A consistent theme throughout the history of the Organization is the degree to which peacekeeping personnel have often failed to grasp the dangers confronting them, seduced by day-to-day conditions that can be viewed as benign. In other words, United Nations peacekeeping personnel have often read normalcy into a situation that is far from normal. And it is this inability on the part of many peacekeepers to discern the extent to which the society is traumatized and vulnerable that is at the root of many of the problems addressed in the present report. Peacekeeping is — and always will be — dangerous, demanding and exceptional, and no participant should assume peacekeeping to be "normal".

3. United Nations peacekeeping has a distinguished history of helping many States and peoples to emerge from conflict with the hope of a better future. Many peacekeeping personnel have given their lives to realize that goal, and their achievements and sacrifices must not be forgotten. But despite the distinguished role that United Nations peacekeeping personnel have played over the last half-century, there regrettably will always be those who violate codes of conduct and thereby dishonour the many who have given their lives in the cause of peace. Sexual exploitation and abuse by military, civilian police and civilian peacekeeping personnel is not a new phenomenon. Such acts cover a wide spectrum of behaviour, from breaches of the Organization's standards of conduct, such as solicitation of adult prostitutes, which may be legal in some countries, to acts that would be considered a criminal offence in any national jurisdiction, for example rape and paedophilia. Besides the United Nations, media and human rights organizations in particular have documented the involvement of peacekeeping personnel in sexual exploitation and abuse in operations ranging from those in Bosnia and Herzegovina and Kosovo in the early 1990s to Cambodia and Timor-Leste in the early and late 1990s to West Africa in 2002 and the Democratic Republic of the Congo in 2004.

4. On 15 April 2003, following its consideration of the report of the Office of Internal Oversight Services on allegations of sexual exploitation and abuse in West Africa (A/57/465), the General Assembly adopted resolution 57/306, in which it requested the Secretary-General to take measures to prevent sexual exploitation and abuse in humanitarian and peacekeeping operations. It called upon the Secretary-General and troop-contributing countries to hold to account any personnel who committed such acts. On 15 October 2003 the Secretary-General promulgated detailed rules prohibiting sexual exploitation and abuse that are mandatory for all United Nations staff, irrespective of their type of appointment (ST/SGB/2003/13).

5. In section 1 of the bulletin, "sexual exploitation" is defined as "any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another". "Sexual abuse" is defined as "actual or

threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions".

6. The reality of prostitution and other sexual exploitation in a peacekeeping context is profoundly disturbing to many because the United Nations has been mandated to enter into a broken society to help it, not to breach the trust placed in it by the local population. Moreover, the Organization should not in any way increase the suffering of vulnerable sectors of the population, which has often been devastated by war or civil conflict. For example, in the Democratic Republic of the Congo, it would appear that sexual exploitation and abuse mostly involves the exchange of sex for money (on average $1-$3 per encounter), for food (for immediate consumption or to barter later) or for jobs (especially affecting daily workers). Some young girls whom I spoke with in the Democratic Republic of the Congo talked of "rape disguised as prostitution", in which they said they were raped and given money or food afterwards to give the rape the appearance of a consensual transaction. Once young girls are in this situation, a situation of dependency is created which tends to result in a continued downward spiral of further prostitution, with its attendant violence, desperation, disease and further dependency. A consequence of sexual exploitation and abuse is the presence of abandoned "peacekeeper babies", children fathered and abandoned by peacekeeping personnel. The absence of a functioning legal system means that the protections afforded to citizens of most countries against this type of abuse are absent. This combination of factors places even more of an onus on peacekeeping personnel to act in accordance with the highest standards of integrity, which is envisaged in Article 101, paragraph 3, of the Charter of the United Nations as the obligatory standard of behaviour for United Nations officials.

7. The Department of Peacekeeping Operations reported that in 2003 it had investigated allegations of sexual exploitation and abuse against 5 staff and 19 military personnel (A/58/777, para. 3). The Secretary-General noted that the Secretariat was aware that the data gathered on cases of sexual exploitation and abuse perpetrated by personnel affiliated with the United Nations might not reflect the true extent of those deplorable incidents, that complaint procedures and victim support mechanisms were not yet adequate and that considerable additional efforts were required to establish a system within which misconduct of that kind was systematically reported on and effectively followed up (ibid., para. 4).

8. Following improvements in the Organization's complaint mechanism, the number of allegations received against peacekeeping personnel increased significantly. Between May and September 2004, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) received 72 allegations of sexual exploitation and abuse (68 against military and 4 against civilian personnel), which were subsequently investigated by the Office of Internal Oversight Services.[1] In response to this significant increase in the number of cases,

[1] On 5 January 2005, the Office of Internal Oversight Services reported (see A/59/661) that it had closed 44 allegations because victims or witnesses could not be identified. It reported on 20 cases involving 51 military personnel, 1 of whom was initially classified as a civilian but was subsequently classified as military. The Office of Internal Oversight Services considered that seven cases had been fully substantiated. Of the remaining cases, the Office considered that in 2 of them the evidence was convincing while in the other 11 there was no corroboration, although there was evidence of sexual exploitation and abuse. In no case did any member of a contingent admit to sexual contact.

the Secretary-General invited me to assist him in determining the nature and extent of the problem of sexual exploitation and abuse in peacekeeping missions. In October 2004 I visited the Democratic Republic of the Congo, and Bunia in particular, and sensed that sexual exploitation and abuse was widespread, involving both civilian and uniformed personnel. Sexual exploitation and abuse appeared to be ongoing, thereby highlighting the inadequacy of current measures to address the problem in peacekeeping operations.

9. In 2004 the Department of Peacekeeping Operations received 16 allegations against civilians, 9 allegations against civilian police and 80 allegations against military personnel, for a total of 105 allegations. The majority of allegations related to sex with persons under the age of 18 years (45 per cent) and sex with adult prostitutes (31 per cent). Allegations of rape and sexual assault comprised 13 per cent and 5 per cent respectively. The remaining 6 per cent of allegations related to other forms of sexual exploitation and abuse defined in the 2003 Secretary-General's bulletin.

10. Sexual exploitation and abuse damages the image and credibility of a peacekeeping operation and damages its impartiality in the eyes of the local population, which in turn may well impede the implementation of its mandate. The ill discipline engendered by sexual exploitation and abuse also degrades the effectiveness of the peacekeeping operation, especially in times of crisis. Moreover, instances of sexual exploitation and abuse may constitute violations of international humanitarian law, international human rights law or both.[2] Indeed, a peacekeeping operation cannot legitimately advise the Government on adherence to international human rights standards and legal and judicial reform if its own peacekeeping personnel are engaging in acts of sexual exploitation and abuse, including such crimes as rape. Sexual misconduct by peacekeeping personnel can also expose both them and the mission to blackmail and violent retaliation, especially during times of breakdown in law and order in the country. Moreover, such misconduct increases the incidence of medical problems, including the risk of contracting or transmitting sexually transmitted diseases and HIV/AIDS. Victims frequently suffer from psychological trauma as a result of their experiences. Victims and abandoned peacekeeper babies may face stigmatization by their families and communities, which deprive them of all support (economic, social, emotional, etc.). This in turn may push victims into further exploitative relationships with peacekeeping personnel and others in order for them and their children to survive.

11. Many important efforts are currently under way in peacekeeping operations to address sexual exploitation and abuse. But they are ad hoc and inadequate to deal with the problem. What is needed is a radical change in the way the problem is addressed in peacekeeping contexts. Measures are suggested in the present report that can be implemented immediately by both the Secretary-General and Member States to improve the prevention, identification and response to this egregious violation of the human rights of the local population, as well as measures for longer-term reform.

12. The reports of the Office of Internal Oversight Services on West Africa and Bunia indicate the difficulty of identifying perpetrators because victims are often frightened, poorly educated young women and children who have difficulty in

[2] See *Women, Peace and Security: Study Submitted by the Secretary-General pursuant to Security Council Resolution 1325 (2000)*, chapter IV (United Nations publication, Sales No. E.02.IV.1).

identifying their foreign assailants. Moreover, in cases involving prostitution there is no economic incentive to report. It follows that while the United Nations must take action against perpetrators, it is crucial to concentrate on preventive measures.

13. During my visit to the Democratic Republic of the Congo, women's organizations brought to my attention a number of factors that they believed contributed to the sexual exploitation and abuse of women and children. They include factors external to the Mission, such as the erosion of the social fabric because of the conflict, which results in a high number of children with little or no family support; a high level of extreme poverty; lack of income-generation possibilities; a high incidence of sexual violence against women and children during the civil conflict coupled with discrimination against women and girls, leading to a degree of local acceptance of violent and/or exploitative behaviour against them; and the lack of a well-functioning legal and judicial system, which creates an environment of de facto impunity. These same factors are present to some degree in many other peacekeeping areas. On the other hand, within MONUC, personnel seemed to share a perception that little was being done to deal effectively with the problem. There was a perception that whistle-blowers would not be protected. There was little awareness of United Nations standards of conduct, inadequate recreational facilities were provided for contingent members and there were protracted periods of separation from families and communities. I have drawn on these experiences, as well as on extensive consultations with representatives of the countries that provide the most military and police personnel and members of the Secretariat, in formulating the recommendations that are set out below.

II. The rules

The problem

14. A United Nations peacekeeping operation may have a civilian component, a military component and a civilian police component. The components are governed by different rules and disciplinary procedures because they each have a distinct legal status. The 2003 Secretary-General's bulletin does not, of its own force, apply to all three categories. This is a serious shortcoming. These technical matters are described in detail in the annex. A short summary follows.

Summary of status and conduct rules for peacekeeping personnel

15. United Nations staff have the status and the privileges and immunities of officials under the Convention on the Privileges and Immunities of the United Nations (the General Convention), which also sets out the conditions under which their immunity may be waived by the Secretary-General. Staff are governed by the standards of conduct set out in the Staff Regulations and Rules and subordinate administrative issuances, such as Secretary-General's bulletins and administrative instructions. The standards are enforced under the Organization's disciplinary procedures.

16. United Nations Volunteers are also employed in peacekeeping missions. Recent status-of-forces agreements[1] extend to them the privileges and immunities of officials granted under the General Convention. United Nations Volunteers are bound by their rules of conduct and are subject to disciplinary procedures.

17. Individual contractors and consultants are also employed by peacekeeping missions. They are subject to local law and are bound by the standards set out in the Organization's standard conditions of contract for individual contractors and consultants.

18. Civilian police and military observers have the status and the privileges and immunities of experts on mission granted under the General Convention (military liaison officers and military staff officers are also considered experts on mission). The General Convention governs the conditions under which this immunity may be waived by the Secretary-General. Civilian police officers and military observers sign an "undertaking" stating that they agree to be bound by all mission standard operating and administrative procedures, policies, directives and other issuances. Experts on mission are also governed by the Regulations Governing the Status, Basic Rights and Duties of Officials Other Than Secretariat Officials and Experts on Mission promulgated by the General Assembly in its resolution 56/280 of 27 March 2002. Those experts who are United Nations civilian police are also bound by mission-specific directives issued by the Police Commissioner. The directives are annexed to the Department of Peacekeeping Operations' guidelines for civilian police officers, which are made available to police-contributing countries. Military observer guidelines, which contain conduct standards for military observers, are also made available to troop-contributing countries. The conduct standards for police and military observers are set out in the Department's Directives for Disciplinary matters Involving Civilian Police Officers and Military Observers, to which the civilian police officers and military observers agree to be bound.

19. Military members of national contingents have the privileges and immunities specified in the status-of-forces agreement or, if none has been concluded, in the model status-of-forces agreement, which the Security Council makes applicable to peacekeeping operations pending the conclusion of a status-of-forces agreement with the host State. The model status-of-forces agreement provides that the troop-contributing country has criminal and disciplinary jurisdiction over military members of the contingents (A/45/594, annex, para. 47 (b)). However, as an administrative measure, the Secretary-General may order the repatriation of any military member of a contingent who has been found culpable of serious misconduct in a mission investigation. Troop-contributing countries have over the years universally accepted the general standards of conduct set out in the publications entitled "Ten Rules: Code of Personal Conduct for Blue Helmets" and "We Are United Nations Peacekeepers". Practice has thus made these general standards applicable to contingent members. Mission procedures for the investigation of allegations against a military member of a contingent are set out in the Department of Peacekeeping Operations' Directives for Disciplinary Matters Involving Military Members of National Contingents, which are made available to the troop-contributing countries.

[1] See annex, paras. A.2-A.7, for a summary of the relevant features of the model status-of-forces agreement.

20. The mission-specific guidelines for troop-contributing countries deploying military units, which are also made available to troop-contributing countries, are starting to include the prohibitions against sexual exploitation and abuse established in the 2003 Secretary-General's bulletin. The guidelines are annexed to the mission-specific memorandum of understanding signed by the United Nations and each troop-contributing country. The provisions in a memorandum of understanding between the United Nations and the troop-contributing country are binding. The annexed troop-contributing country guidelines, however, which contain the detailed rules of the bulletin, are specifically identified as containing general administrative and financial arrangements. In legal terms, "guidelines" can be contrasted to "rules". Guidelines provide a general model that may or may not be followed depending on the circumstances; rules set out norms that must be followed. But codes of conduct, in particular detailed prohibitions against sexual exploitation and abuse, must have the status of binding rules. They cannot be merely guidelines.

21. The basic standards of conduct and integrity required of the various categories of peacekeeping personnel — set out in the Staff Regulations and Rules, the Ten Rules and We Are United Nations Peacekeepers — are similar because they are all derived from principles established in Article 101, paragraph 3, of the Charter, which requires the highest standards of integrity of United Nations officials. But those documents are general in nature; they do not give specific instructions on precisely what acts of sexual exploitation and abuse are prohibited. The 2003 bulletin fills that gap by setting out such detailed prohibitions. The bulletin was welcomed by the Special Committee on Peacekeeping Operations (Special Committee)[4] and by the General Assembly in its resolution 58/315 of 1 July 2004, but it must be noted that the bulletin applies of its own force only to United Nations staff.

22. There is thus an extensive mosaic of provisions drafted at varying points in time and with varying degrees of legal force dealing with sexual exploitation and abuse that apply to the various categories of peacekeeping personnel. As noted above, only United Nations staff members are unquestionably bound by the prohibitions set out in the 2003 Secretary-General's bulletin. Civilian police and military observers agree to be bound by directives, which, since approximately mid-2004, have included a summary of those prohibitions. The situation of military members of contingents is unclear. Rules can be made binding on military members of contingents only with the agreement of and action by the troop-contributing country concerned.

[4] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 19* (A/58/19), para. 115.

Recommendations

Uniform and binding standards

23. The prohibitions against sexual exploitation and abuse for all categories of peacekeeping personnel should be those set out in the 2003 Secretary-General's bulletin.

24. It is recommended that the Special Committee recommend to the General Assembly that all civilian and uniformed personnel appointed or contracted by the United Nations be bound by the standards set out in the 2003 bulletin and that all peacekeeping personnel appointed by the Secretary-General be bound by appropriate language in their contracts or letters of engagement. The "undertaking" that is signed by each member of the civilian police and each military observer ought to be revised to specifically include the standards contained in the 2003 bulletin and should require adherence to those standards. The conditions of employment of United Nations Volunteers ought to reflect those standards, and all Volunteers should be required to sign a statement on appointment to a mission that they will comply with them as part of their conditions of appointment. All of the above-mentioned categories of personnel must acknowledge in writing that they understand that violating the prohibitions will result in immediate termination of their United Nations assignment.

25. As to military members of contingents, it is recommended that the Special Committee recommend to the General Assembly that it adopt the standards set out in the 2003 bulletin as a uniform standard of conduct for all military members of national contingents serving in peacekeeping operations. It is recommended that the General Assembly decide that those standards should be incorporated into the model memorandums of understanding between the United Nations and troop-contributing countries and that the model memorandum of understanding should require that troop-contributing countries issue those standards in a form binding on their contingent members. It is recommended that the Department of Peacekeeping Operations seek to amend all existing memorandums of understanding to include such provisions.

Issuance of standards in a convenient form

26. An effective strategy against sexual exploitation and abuse requires not only clarity as to the substance of the binding rules, but also accessibility to the rules by all peacekeeping personnel. The United Nations publishes the Ten Rules and We Are United Nations Peacekeepers on cards, but only in the official languages of the United Nations. It is recommended that the Secretary-General issue the 2003 bulletin standards on cards as well. It is also recommended that the Special Committee request the Secretary-General and the troop-contributing countries to cooperate in the publishing of those standards, as well as the specific prohibitions against sexual exploitation and abuse, in the languages of contingent members. It is recommended that the troop-contributing country supply the translation of the standards into the languages used by its contingents and that the United Nations arrange for printing them on cards at the expense of the mission concerned.

Summary of recommendations

27. **The General Assembly should reiterate its approval of the standards set out in the 2003 bulletin and make them applicable to all categories of peacekeeping personnel, without exception. It should also request the Secretary-General to ensure that all civilian personnel are bound by them. Furthermore, the Assembly should decide that those standards and the standards contained in Ten Rules and We Are United Nations Peacekeepers be included in the model memorandums of understanding, and the troop-contributing countries should undertake to issue the standards in a form binding on their personnel. The Secretary-General and troop-contributing countries should cooperate to issue the standards set out in the 2003 bulletin, as well as those contained in Ten Rules and We are United Nations Peacekeepers, to troop-contributing country personnel in convenient card form in the languages of those personnel, with the troop-contributing country providing the translation and the mission arranging for publication of the cards at its cost.**

III. The investigation

The problem

28. Those who violate United Nations standards need to be punished. It is equally important to keep in mind, however, that the making of allegations does not establish culpability. Troop-contributing countries frequently complain that the current investigative mechanisms of the Department of Peacekeeping Operations (the "preliminary investigation", which is the mission's first reaction to a report of misconduct, and the subsequent board of inquiry) do not emphasize that there must be a presumption that the troops investigated have acted properly. Moreover, troop-contributing countries frequently complain that evidence gathered by mission boards of inquiry and in prior preliminary investigations is either not sufficient under their national law for use in subsequent judicial or court martial proceedings or has not been gathered in a manner required by their law. Frequently the troop-contributing country will not even get the entire board of inquiry documentation because of a United Nations policy of not releasing documents that might be used by third parties to make claims against the Organization. It is thus hardly surprising that troop-contributing countries are often reluctant to take action on the basis of the Organization's procedures. In addition, peacekeeping missions do not have available on a routine basis expert personnel to assist in their investigations, nor do they have assistance from an expert prosecutor from the troop-contributing countries concerned who could advise on the requirements for subsequent action.

29. Those difficulties are compounded by the fact that mission preliminary investigations and boards of inquiry seem to some extent to be duplicative. As stated in the Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers, the preliminary investigation is conducted to establish the facts. If the preliminary inquiry appears to indicate that the report of serious misconduct is well founded, the head of mission shall establish a board of inquiry. The board of inquiry is to establish the facts and determine causes and responsibility in the incident under review, and may also make recommendations for appropriate administrative action, including repatriation. The Directives also state that the board

of inquiry is a management tool to assist the head of mission in discharging his or her responsibilities. The procedures in use for civilian police and military observers are the same.

30. The preliminary investigation is also used for United Nations staff. The administrative instruction entitled "Revised disciplinary measures and procedures" provides that if a preliminary investigation appears to indicate that a report of misconduct is well founded, the matter is sent to the Assistant Secretary-General for Human Resources Management, who decides whether to charge the staff member with misconduct. It is thus clear that the quality of the first investigation is also crucial for staff disciplinary cases.

Recommendations

Professional investigative mechanism

31. There seems to be no reason why, at the mission level, there need to be two investigations to establish facts. What is crucial is an investigation conducted by professionals who, in appropriate cases, particularly where there is an indication of criminal activity, have access to modern scientific methods of identification, such as fingerprinting, fibre analysis and blood and DNA testing. Access to such techniques is cost-effective and can help eliminate false accusations as well as establish culpability. The head of mission can draw needed management conclusions from a professional report, and it is likely that it will be possible to assess evidence gathered professionally in confidence and that such evidence will be more useful at the next stage in the process, be it disciplinary, court martial or criminal. Of course in straightforward cases, such as those in which culpability is admitted or proven by a number of independent witnesses, investigations could continue to be done by members of the mission concerned.

32. It is thus recommended that, for cases of sexual exploitation and abuse, and indeed for other cases of misconduct of a similar grave nature or where complex investigative techniques are needed, the Secretary-General establish a permanent professional investigative capacity sharing some of the administrative machinery of the Department of Peacekeeping Operations yet remaining totally independent of the command structures of the Department and the missions. Such a Department of Peacekeeping Operations investigation would replace the preliminary investigation and the board of inquiry. The investigative mechanism, although independent of missions, must have the authority, as a matter of priority, to discharge its mandate in the mission area. In other words, the mission must cooperate fully with investigators and extend its facilities to them to enable the investigation to operate effectively. The mechanism could be regionally based, as it might be neither cost-effective nor feasible to have such a capacity in every mission. To ensure the independence of such an investigative mechanism from those it investigates, it should report to the Secretary-General or the Deputy Secretary-General with a copy of each report sent to the Under-Secretary-General for Peacekeeping Operations and to the head of mission for their information. In particular, it must have access to professionals who have experience in investigating sex crimes, especially those involving children. It must have access to experts who are able to provide advice on the evidentiary requirements and standards of proof needed for the next stage in the process, whether the persons being investigated are staff members, civilian police, military

observers or members of military contingents. Where positive identification of those accused cannot be achieved through traditional methods, the mechanism must have access to modern techniques of forensic identification. This reform would help to ensure that those unjustly accused would be able to clear their names and that those justly accused would be found culpable. It would also ensure that complex and sensitive investigations into allegations of sexual exploitation and abuse were not undertaken by "enthusiastic amateurs". The Department of Peacekeeping Operations investigation would be used for all categories of personnel.

33. It is crucial that the troop-contributing country participate in investigations of allegations that a member of its contingent has engaged in sexual exploitation and abuse or similarly grave offences. Its participation would ensure that the troop-contributing country would have access to all documents and evidence, which would in turn ensure that the process was transparent for the troop-contributing country concerned. It would instil confidence that allegations were properly evaluated. Most importantly, the participation of the troop-contributing country at an expert level would help to ensure that evidence was gathered in conformity with the laws of the troop-contributing country so that it could be subsequently used by the country to take action against the contingent member. Thus, it is crucial that troop-contributing countries participate through a military lawyer, preferably a military prosecutor, who has expert knowledge of the requirements of that State's military law and understands what material will be required for subsequent action and who will ensure that the investigation assists rather than hinders subsequent action under national law. It is thus suggested that the Special Committee recommend to the General Assembly that the model memorandum of understanding contain a provision requiring each troop-contributing country to nominate a military prosecutor who is available to travel on short notice at mission expense to participate in any Department of Peacekeeping Operations investigation into allegations of sexual exploitation and abuse or similar grave offences against a member of its contingent.

34. It is also recommended that the model memorandum of understanding require a troop-contributing country to share with the Department of Peacekeeping Operations investigation any information that the contingent has gathered as a result of its own investigation into an incident. Cooperation between a contingent and the mission is essential if the problem of sexual exploitation and abuse is to be eliminated.

Possible use of on-site courts martial

35. An on-site court martial for serious offences that are criminal in nature would afford immediate access to witnesses and evidence in the mission area. An on-site court martial would demonstrate to the local community that there is no impunity for acts of sexual exploitation and abuse by members of military contingents. Of course, the holding of a court martial in a host State would require its permission, but such permission is implicit in paragraph 47 (b) of the model status-of-forces agreement, which provides that military members of the military component of a United Nations peacekeeping operation shall be subject to the exclusive jurisdiction of their participating States in respect of any criminal offences be committed by them in the host State. Therefore, all troop-contributing countries should hold on-site courts martial. Those countries which remain committed to participating in

peacekeeping operations but whose legislation does not permit on-site courts martial should consider reform of the relevant legislation.[5]

Summary of recommendations

36. **It is recommended that the General Assembly authorize the establishment of a professional investigative capacity to investigate allegations of sexual exploitation and abuse and misconduct of a similar grave nature against all categories of peacekeeping personnel. The investigative body must be staffed by experts who have had experience in sex crime investigations, particularly those involving children. It must have access to modern forensic methods of identification. Furthermore, it must be independent of the missions and could be regionally based. It is recommended that the troop-contributing country participate as a member in any case that concerns its troops and that it participate through an expert in military law, preferably a military prosecutor, designated in the memorandum of understanding, who would be flown to the investigation site by the United Nations to ensure that evidence was gathered in such a manner that it could be used in a subsequent court martial or in national judicial proceedings. It is recommended that troop-contributing countries conduct on-site courts martial and that countries whose legislation does not permit them consider reforming their legislation.**

IV. Organizational, managerial and command accountability

The problem

37. There is a justified perception that neither the Organization nor its civilian managers and military commanders are held to account to make good-faith efforts to address the problem of sexual exploitation and abuse in peacekeeping operations. This must change.

Recommendations

Organizational accountability

38. Ultimately, the United Nations is accountable for its peacekeeping operations. It is thus incumbent on the Organization to attempt to minimize instances of sexual exploitation and abuse in its peacekeeping missions.

Basic measures

39. First, managers and commanders must, by their example and by raising awareness, ensure that all personnel under their supervision are aware that sexual exploitation and abuse, as defined in the 2003 Secretary-General's bulletin, constitute unacceptable abuse of the local population and will not be tolerated by the Organization. Setting an example and raising awareness are not enough, however.

[5] The drawbacks of not being able to conduct on-site courts martial were alluded to by the Secretary-General almost 50 years ago in paragraph 137 of his report entitled "United Nations Emergency Force: Summary study of the experience derived from the establishment and operation of the Force" (A/3943 of 9 October 1958).

The Department of Peacekeeping Operations must organize intensive training for peacekeepers, both on arrival and during the mission assignment, on the required standards of conduct and, in particular, on the detailed prohibitions set out in the 2003 bulletin. Managers and commanders should attend the opening of the training sessions to emphasize the importance that the Organization attaches to the elimination of sexual exploitation and abuse. The memorandums of understanding should obligate troop-contributing countries to ensure that contingent commanders are aware of their responsibility to ensure that their contingents attend and receive such training prior to deployment.

40. The second basic requirement is an effective programme of outreach to the local community to explain the Organization's policy against sexual exploitation and abuse and to provide effective mechanisms to enable individuals to make complaints in a confidential setting. The outreach campaign must make clear that retaliation against those who complain will not be tolerated. The Department of Peacekeeping Operations has sent basic information to missions on how to establish such programmes. Missions should be given a fixed period of time, say six months, to develop and implement the programmes.

41. Third, the Department of Peacekeeping Operations must develop and require missions to implement a data collection and management system that tracks not only allegations but also the response of missions to those allegations. The senior management of the Department must be able to find out, at any given time, the situation in all missions as to both the number of allegations of sexual exploitation and abuse and the status of investigations into the allegations, including exactly what follow-up action has been taken at any point in time. The database would also be a useful management tool to ensure that prior offenders are not rehired. The Secretary-General should instruct the Department of Peacekeeping Operations to implement such a system within six months.

42. The fourth basic requirement is a few dedicated personnel at Headquarters and in peacekeeping missions to implement the measures described above. I note that the Department of Peacekeeping Operations has established full-time personnel conduct officer positions in peacekeeping operations in Burundi, Côte d'Ivoire, the Democratic Republic of the Congo and Haiti. I would encourage the development of this process. I would also recommend the creation of a dedicated capacity at Headquarters to address cases of misconduct, including sexual exploitation and abuse, involving military, civilian police and civilian personnel, to provide prompt advice to missions, to ensure the coherent application of disciplinary procedures, to provide guidance and advice for all categories of civilian and uniformed personnel and to make recommendations for policy changes in the light of experience.

43. The fifth basic requirement is an increase in the percentage of female peacekeeping personnel. That would facilitate the mission's task of making meaningful contact with vulnerable groups and non-governmental organizations in the local community in its effort to eliminate sexual exploitation and abuse.[6]

[6] In *Gender Resource Package for Peacekeeping Operations* (United Nations publication, sales No. E.04.IV.6), it is noted that, as at March 2004, 16 per cent of senior civilian peacekeeping personnel (D-1 and above) were women, 26 per cent of professional peacekeeping personnel were women and 24 per cent of General Service peacekeeping personnel were women; as at October 2003, 1.5 per cent of military personnel were women and, as at September 2003, 4 per cent of civilian police were women.

Victims and their spokespersons tend to be female and the presence of female interlocutors, especially in senior positions, would facilitate efforts to encourage the reporting of abuse, which is the first step in eliminating it. Finally, the presence of more women in a mission, especially at senior levels, will help to promote an environment that discourages sexual exploitation and abuse, particularly of the local population.

44. United Nations standards of conduct prohibit sexual activity with prostitutes, which is the most accessible form of sexual activity for contingent members in particular.[7] At the same time, condoms are either provided to soldiers or are made available to them as part of the programme between the Department of Peacekeeping Operations and the Joint United Nations Programme on HIV/AIDS. This may create an impression, at least in the minds of some peacekeeping personnel, of an official "zero tolerance" policy coexisting with an unofficial policy to the contrary. In order to avoid sending a confusing message, I suggest that the HIV/AIDS awareness training make clear the prohibitions defined in the 2003 bulletin and emphasize that any transgressions will be severely punished. It could be explained during the training that condoms were being distributed as a life-saving measure to prevent the spread of HIV/AIDS.

45. Managers must realize that non-specific allegations of sexual exploitation and abuse cannot be ignored. Such allegations may be an early warning of real abuse. Such allegations must be recorded and examined. While they may not justify action against a particular individual, such allegations may be an indication of a problem that requires a managerial response, for example, repeat training for specific groups or the issuance of a warning against violations of the 2003 bulletin.

46. Finally, troop-contributing countries should be encouraged to send established units to peacekeeping missions rather than assembling units from different existing national units. The discipline and cohesion of established units is better than in assembled units and the commander and the unit's officers are more likely to know the strengths and weakness of their personnel and, therefore, be better able to maintain tight discipline.

Mission-specific measures

47. Each mission must institute measures appropriate to the specific conditions in that mission, particularly if there are numerous allegations of sexual exploitation and abuse. For example, some missions may need to prescribe curfews and off-limits areas, patrol those areas and ensure that unauthorized civilians are not permitted access to military camps. Other missions may need to replace static guard posts located in residential areas with mobile patrols. In some areas it might be necessary to require troops to wear uniforms at all times or confine them to barracks when off duty. It will be necessary to require contingent commanders to ensure that the troop quarters are secure and that entry and exit are strictly controlled. Penalties must be imposed for transgression of the rules.

48. In some cases it might be appropriate to require that the mission's military police component be from a troop-contributing country other than one of those whose contingents are being policed to ensure impartiality in their policing duties.

[7] United Nations staff and experts on mission often liven in private houses and improper sexual liaisons with the local population are often less visible.

In any event, that military police component should not be co-located with the contingents that they are to police and control.

49. In high-risk areas it might even be necessary for the head of mission to seek authorization from the Secretary-General to institute standards that are stricter than those set out in the 2003 bulletin, such as banning all sexual relations with the local population in all or part of the mission area. This could be seen as an additional protective measure to protect the reputation and credibility of the mission and its ability to effectively and, in the eyes of the local population, impartially implement its mandate and to protect a local population that is highly vulnerable to exploitation and abuse.

Measures to ameliorate conditions of service

50. Service in a high-stress area with little opportunity for recreational breaks may contribute to aberrant behaviour. Account needs to be taken of such factors. For example, there needs to be some flexibility in the existing strict rules on the utilization by staff of periods of rest and recuperation away from the mission area. In some peacekeeping areas classified as non-family duty stations, the funds and programmes do permit family members. It seems that the classification of missions as non-family at times is tied more to financial rather than security considerations. If the cost of making some missions into family duty stations is too high, consideration might be given to at least permitting visits of family members to the nearest safe location. In addition, missions should have welfare officers and staff counsellors to assist staff in adjusting to mission life.

51. A key strategy used by contingent commanders to maintain proper conduct is to keep the contingent members busy when off duty. At present, troop-contributing countries receive $8 per soldier per month for "troop welfare". However, use of such welfare money is discretionary, and I observed during my visit to MONUC that welfare money was not always translated into welfare services for contingent members on the ground. I would therefore recommend that the United Nations establish fixed recreational sites inside a mission area or nearby to allow rest and recuperation of contingent members during their hours of duty. The sites could consist of low-cost infrastructure such as tents and recreational facilities such as sports areas, free Internet facilities and subsidized telephone lines to facilitate contact with family and friends. In exceptionally difficult areas where such facilities are not possible, mission transportation assets (e.g., aircraft) could be used to facilitate the transportation of contingent members to recreational sites. While at the sites, the contingent members would remain under the command and control of their officers. I would recommend that, at least for a trial period, such low-cost measures be authorized and that the cost be absorbed by the Organization as part of mission expenses. If the costs are greater than anticipated, some adjustment might be made to the welfare payments currently made to troop-contributing countries to take account of the cost of mission-provided recreational facilities.

Victim assistance

52. A peacekeeping operation usually has neither the resources nor the mandate to provide comprehensive assistance to victims of sexual exploitation and abuse. However, there is much that can be done with a minimum of expenditure. It is morally incumbent on the Organization to provide some emergency and practical

assistance to victims who make allegations against United Nations peacekeeping personnel. This assistance should be seen as an expense incidental to the Organization's general responsibility for the conduct of a peacekeeping operation.

53. There is a need to provide basic first-aid medical treatment to alleged victims or to refer them to such services provided by humanitarian organizations. At the time of this basic treatment, an attempt could be made to obtain forensic evidence so as to identify the perpetrator and to hold him to account.

54. There needs to be better coordination with relief agencies to ensure that alleged victims are given follow-up support, including psycho-social assistance, by humanitarian organizations. This is particularly needed in the case of child victims. It is suggested that each peacekeeping mission establish formal links with relief agencies that are able to provide such assistance. Moreover, there is a need to provide basic advice to alleged victims. For example, if there is a functioning legal system, the peacekeeping operation should refer victims to organizations that may enable the victim to seek civil or criminal redress against alleged perpetrators.

55. It is also crucial to provide some feedback to alleged victims on their complaints to the mission. At the end of the mission's investigations, the alleged victim should be informed, in general terms, of action that has been taken as a result of a complaint and the outcome of the mission's investigation. Such information would serve to assure victims, as well as the host population, that neither the United Nations nor the countries contributing troops and police tolerate sexual exploitation and abuse, take complaints seriously and investigate them and are seen to take action against alleged perpetrators.

56. The United Nations ought to establish a voluntary trust fund for victims to provide assistance to victims of sexual exploitation and abuse by United Nations peacekeepers. Staff might be encouraged to make a donation to the fund each year. But it is crucial that the trust fund have simplified procedures so that payments can be made quickly.

Managerial and command accountability

57. In section 4.1 of his 2003 bulletin, the Secretary-General recognizes the crucial role of managers by making them responsible for creating and maintaining an environment that prevents sexual exploitation and sexual abuse. The bulletin also makes them responsible for taking appropriate action against perpetrators in cases where there is reason to believe that any of its standards have been violated. Managers set the tone and serve as role models for those under their supervision. As is commonly acknowledged in the military, soldiers are only as good as their commander. Managers, whether civilian, civilian police or military, must be at the forefront of efforts to combat sexual exploitation and abuse. They must be held strictly accountable for discharging that role.

58. Accountability cannot be thought of in negative terms; it is an integral part of management and command. Managers who make a good-faith effort to deal with the issue of sexual exploitation and abuse must be rewarded by appropriate notations in the performance appraisal mechanisms used to assess their suitability for higher office. But good managerial performance in addressing sexual exploitation and abuse cannot be linked to the number of allegations reported. The institution of some of the reporting and outreach mechanisms that I advocate above may lead, in

the short run, to a larger number of reports of abuse as victims realize that they can securely come forward and complain.

59. Any assessment of managerial performance with respect to addressing sexual exploitation and abuse should be based on the implementation of clearly defined measures such as those advocated in the present report. The specific measures to be taken by a specific manager should be part of his or her goals for the reporting period. Failure to implement all or part of those goals should be reflected in the performance assessment of the manager. Repeated failure to meet managerial objectives ought to result in reassignment to non-managerial functions.

60. On the military side, the Force Commander should be specifically tasked by the Under-Secretary-General for Peacekeeping Operations with ensuring that contingent commanders and senior military staff are aware of the United Nations policy of zero tolerance for sexual exploitation and abuse. It should be made clear that the performance of contingent commanders and senior military staff will be assessed, as indicated in the following paragraph, on the basis of how they implement this policy. They must be informed that they will be held strictly accountable for introducing measures that seek to prevent such abuse. They must also be held accountable for ensuring that those under their command who deviate from the rules are punished. Commanders who discharge these obligations should be rewarded by a special commendation or, perhaps, a medal.

61. It is, of course, to be expected that from time to time individuals will violate the prohibitions against sexual exploitation and abuse. This does not dishonour a contingent that is trying to deal with the problem and that takes action against alleged perpetrators. But what is inexcusable is a contingent commander who does not cooperate with a Department of Peacekeeping Operations investigation or, worse, seeks to hinder that investigation by failing to properly cooperate with it. It is recommended that the Secretary-General direct heads of mission to recommend the immediate repatriation of any contingent commander who fails to cooperate with a Department of Peacekeeping Operations investigation or otherwise fails to discharge his or her responsibility to help the mission eliminate sexual exploitation and abuse. It is suggested that the Secretary-General write to the Head of State of the troop-contributing country to explain why he was forced to take such action. These obligations on contingent commanders should be specifically set out in the model memorandum of understanding, in which the troop-contributing country should be obligated to take disciplinary action against contingent commanders who are so removed. It is also recommended that the model memorandum of understanding specifically provide that the United Nations will recover payments it has made for any individual contingent commander who is found to have failed to cooperate with a Department of Peacekeeping Operations investigation into allegations of sexual exploitation and abuse. Such funds should be paid into the trust fund for victims (see para. 56 above). By the same token, contingent commanders who take action to discipline their contingent members and who cooperate fully with a Department of Peacekeeping Operations investigation to enable those who violate the 2003 bulletin standards to be punished should be specially commended by the Secretary-General in a letter addressed to the Head of State or Government.

Summary of recommendations

62. A number of basic measures are recommended in the present report that the Organization, as part of its responsibility for the conduct of peacekeeping operations, must implement to attempt to eliminate sexual exploitation and abuse. The Organization must require its managers to lead by example and ensure that training programmes for all categories of personnel are instituted prior to deployment and during the mission assignment. The Organization must institute a programme of outreach to the local community and enable alleged victims to make complaints. It must develop a data tracking mechanism that will enable senior management to be aware of the number and type of allegations and the state of follow-up investigations into them and to ensure that those found culpable of such offences are not rehired. A number of key positions at Headquarters and in the field are needed to respond effectively to sexual exploitation and abuse, and the number of female peacekeeping personnel should be increased. When condoms are distributed to troops it should be made clear that it is being done as part of the fight against transmission of HIV/AIDS. The Organization should take proper account of non-specific allegations, which are often a warning sign of a breakdown in discipline or possible misconduct. The Organization should encourage troop-contributing countries to send established units to peacekeeping operations, as they are usually managed and disciplined better than units assembled specifically for the peacekeeping operation from existing units.

63. Mission-specific measures should be instituted to deal with sexual exploitation and abuse, such as curfews and off-limits areas and replacement of static guard posts with mobile patrols, if appropriate. If possible, the mission's Military Police Unit should be from a contingent other than one of those being supervised. In some high-risk areas, it might be necessary for a mission to have stricter rules than those contained in the 2003 bulletin.

64. Some measures should be instituted to ease the living conditions in the missions, such as provision of recreational facilities for troops with free Internet service and subsidized telephone calls to facilitate contact with family and friends. Measures should also be instituted to help alleged victims, including provision of emergency medical care and psychological counselling and advice on how to make a claim against alleged perpetrators. A trust fund for victims should be established and missions should give feedback to alleged victims on the results of its investigations into their complaints.

65. Civilian managers and military commanders must be specifically tasked with implementing the programmes and policies of the Organization to eliminate sexual exploitation and abuse, and their performance should be assessed on the basis of how they implement those policies. Those who carry out the programmes should be rewarded and those who fail to do so should be removed from managerial and command functions. The model memorandum of understanding should provide that contingent commanders who cooperate with Department of Peacekeeping Operations investigations into allegations made against members of their contingents are commended and that those who fail to cooperate or obstruct such investigations are repatriated, and the Secretary-General should write to the Head of State of the country concerned explaining why the commander was repatriated. It is recommended that in such cases the

United Nations recover all payments made in respect of that commander and that those funds be paid to the trust fund for victims. Contingent commanders who take action to discipline their contingent members and who cooperate fully with a Department of Peacekeeping Operations investigation to make it possible for those who violate the 2003 bulletin standards to be punished should be specially commended by the Secretary-General in a letter addressed to the Head of State or Government.

V. Individual disciplinary, financial and criminal accountability

The problem

66. There is a widespread perception that peacekeeping personnel, whether military or civilian, who commit acts of sexual exploitation and abuse rarely if ever face disciplinary charges for such acts and, at most, suffer administrative consequences. Nor are they held to account financially for the harm that they cause to their victims. There is a similar perception that peacekeeping personnel who commit acts of sexual exploitation and abuse that constitute crimes under generally accepted standards (e.g., rape or sexual relations with young children) are not normally subjected to criminal prosecution, whether by court martial or by trial before a national criminal court, which would have been the inevitable result if they had committed such acts in their home countries. Such perceptions are not without foundation.

67. Some of the difficulties faced by troop-contributing countries in acting on what they perceived to be flawed preliminary investigations and board of inquiry reports were explained earlier in the present report. Also examined were the difficulties faced by the Department of Peacekeeping Operations in investigating allegations of sexual exploitation and abuse where traditional methods of identification through witnesses proved difficult if not impossible. Underlying such problems of investigative technique are two more fundamental problems that are more difficult to resolve:

(a) In respect of military members of national contingents, troop-contributing countries are often reluctant to admit publicly to acts of wrong doing and consequently lack the will to court-martial alleged offenders;

(b) In respect of staff and experts on mission, the lack of a legal system in some peacekeeping areas that meets minimum international human rights standards makes it difficult for the Secretary-General to waive the immunity of staff accused of serious crimes in the mission area.

Recommendations

Individual disciplinary and financial accountability

Disciplinary accountability

68. Personnel who violate the standards established in the 2003 Secretary-General's bulletin ought to be subjected to disciplinary action unless, in the case of

staff or experts on mission, the Secretary-General, in lieu of such action, accepts an immediate resignation and a designation that the individual is never to be re-employed by the United Nations is placed in his or her file.

69. In the Secretary-General's 2003 bulletin, violations of the standards set out therein were defined as "serious misconduct" under the Staff Regulations and Rules. "Serious misconduct" is defined as misconduct of so serious a nature as to justify summary dismissal from service of a staff member found culpable by the Secretary-General of such misconduct. In order to emphasize to staff that Member States, as well as the Secretary-General, have zero tolerance for sexual exploitation and abuse, it is recommended that the General Assembly amend the Staff Regulations to specifically provide that acts of sexual exploitation and abuse constitute serious misconduct. It is also recommended that the Assembly request the Secretary-General to introduce expedited procedures, including suspension without pay in appropriate cases, to deal with cases of sexual exploitation and abuse. That would ensure that those found to have committed such acts would be severely punished, including being summarily dismissed.

70. Furthermore, it is recommended that the General Assembly indicate that the appointments of civilian police or military observers found to have violated the standards set out in the 2003 bulletin ought to be terminated, as should the contracts of all other civilian personnel (United Nations Volunteers and individual consultants and contractors) who violate the standards.

71. It is recommended that the model memorandum of understanding be amended to provide that troop-contributing countries undertake to institute disciplinary action against military members of their contingents found to have violated the standards set out in the 2003 bulletin by means of an investigation conducted in accordance with the recommendations set out in section II above.

Financial accountability

72. Many victims, especially those who have "peacekeeper babies" and who have been abandoned by the fathers, are in a desperate financial situation. There is a need to try to ensure that fathers, who can be identified, perhaps through blood or DNA testing, bear some financial responsibility for their actions.

73. The United Nations Staff Rules permit the imposition of fines (either alone or in conjunction with other penalties) on a staff member who is guilty of misconduct. It is suggested that the Secretary-General announce that, in addition to dismissing staff who violate the standards set out in the 2003 bulletin, he will impose disciplinary fines that will be sent to the Trust Fund for Victims (see para. 56 above).

74. Consideration ought to be given to amending the police disciplinary directives and the military observer guidelines to enable similar action to be taken against civilian police and military observers who are found to have violated the standards set out in the 2003 bulletin.

75. It is also suggested that the disciplinary directives for national contingents be amended to enable the daily allowance of soldiers found guilty of acts of sexual exploitation and abuse to be paid to the trust fund through recovery from future payments to the troop-contributing country. The troop-contributing country has

disciplinary authority over members of its contingents and can take action to recover those sums from the soldiers concerned.

76. There may also be a way to assist a mother of a peacekeeper baby to obtain some child support, at least if the alleged father is a staff member. The Secretary-General's bulletin entitled "Family and child support obligations of staff members" enables the United Nations to honour court orders against United Nations staff members for family support (ST/SGB/1999/4). Victims who have credible evidence of paternity ought to be encouraged to seek a court order for support if there is a functioning legal system. For cases where there is no functioning legal system and where the mother of a peacekeeper baby is able to credibly identify a staff member as the father of her child, the General Assembly could adopt a resolution requesting the Secretary-General to promulgate rules enabling him to offer to obtain a DNA test of the child. The staff member would have to either acknowledge the claim or to submit to a DNA test to prove that the allegation was ill-founded. If paternity were established, the United Nations could, with a small change in its rules, deduct from the salary of that staff member, or from his final emoluments if he had been dismissed for violation of the standards set out in the 2003 bulletin, a specified amount, say the equivalent of one year's salary of a local employee in the mission area. This would at least provide some child support to the mother. If the identity of the father is unknown, some assistance could be given from the trust fund for victims. Similar rules could be introduced by the Secretary-General for other categories of personnel.

77. If such claims are made against members of national contingents, the United Nations should assist the mothers to make a claim that could be forwarded to the troop-contributing country for consideration. The model memorandum of understanding could have provisions whereby the troop-contributing country would agree to process such claims in accordance with its laws.

Individual criminal accountability

Military members of contingents

78. Under the model status-of-forces agreement, military members are subject to the criminal authority of the troop-contributing country concerned. Because military members of national contingents are not subject to the criminal jurisdiction of the host State, the model status-of-forces agreement, which has been repeatedly endorsed by the Security Council, specifically envisaged that the Secretary-General would obtain formal assurances from the troop-contributing country concerned that it would exercise jurisdiction with respect to crimes that might be committed by their forces in the mission area (see A/45/594, annex, para. 48). In a footnote to that provision, it was noted that such formal assurances would be inserted into the country-specific memorandum of understanding. The practice of the Organization no longer follows that understanding, but it should.[8] Accordingly, the Special Committee should recommend to the General Assembly that it request the

[8] In the early years of peacekeeping, this practice was followed. For example, in an exchange of letters between the Secretary-General and Finland of 21 and 27 June 1957, formal assurances were given by Finland that it would exercise jurisdiction over any of its contingents assigned to the United Nations Emergency Force who committed crimes in the peacekeeping area (United Nations, *Treaty Series*, vol. 271, p. 135).

Secretary-General to always obtain formal assurances from troop-contributing countries that they will ensure respect for local law by members of their contingents and that they will exercise jurisdiction when a Department of Peacekeeping Operations investigation, conducted in accordance with the recommendations made in section II above, concludes that allegations made against a military member of its contingent are well founded.

79. It is therefore recommended that the model memorandum of understanding contain a clause indicating that if a Department of Peacekeeping Operations investigation, conducted in the manner described above with the participation of the troop-contributing country, concludes that the allegations are well founded, the troop-contributing country is obligated to forward the case to its national authorities to be considered for prosecution. The model memorandum of understanding should further provide that those authorities will take their decision in the same manner as they would for an offence of a similar grave nature falling under the laws of that country. The model memorandum of understanding should also provide that if those authorities conclude that prosecution is not appropriate, the troop-contributing country will submit a report to the Secretary-General explaining why prosecution was not appropriate. The model memorandum of understanding also ought to require the troop-contributing country to agree to inform the Secretary-General within 120 days after a case has been referred to it of measures it has taken under its national law and to inform him of progress achieved every 120 days thereafter until the case is finalized.

80. It must be emphasized that the provisions outlined above do not obligate a troop-contributing country to prosecute. A decision whether or not to prosecute is an act of sovereignty. However, these provisions will require a troop-contributing country to submit the case to the appropriate authorities, who must decide whether or not to prosecute in the same way as they would for an offence of a similar grave nature under their laws in their own jurisdiction. The suggested provisions would also obligate the troop-contributing country to report the outcome of the case in its jurisdiction.

81. It is recommended that the General Assembly request that this procedure be an essential condition for acceptance of an offer from a troop-contributing country to supply troops to the United Nations. It is of course realized that deployments may take place before a memorandum of understanding has been concluded, and so it is suggested that the Security Council, in its resolutions authorizing peacekeeping operations, provide that until a memorandum of understanding is signed by the troop-contributing country the model memorandum of understanding governs, as is the case for the model status-of-forces agreement. There would then be a complete legal regime governing the peacekeeping operation pending the conclusion of the status-of-forces agreement and the various memorandums of understanding with the troop-contributing countries.

82. The Secretary-General, in his annual report to the Special Committee, should describe in general terms the actions taken by troop-contributing countries in response to cases referred to them. The Secretary-General should, in a separate section of the report, set out the details of cases in which a troop-contributing country failed to inform him of the action taken as a result of the mission's investigation. In such cases the report shall name the troop-contributing country and provide details of the alleged conduct, of course without revealing the identity of the

member of the contingent alleged to have committed those acts. In other words, the time has come to establish a reporting procedure, but it should be noted that this would occur only if a troop-contributing country failed repeatedly to comply with its reporting obligations under the memorandum of understanding.

83. The reforms described above would ensure that the international community would recognize the determination of the Organization and the troop-contributing countries not to tolerate acts of sexual exploitation and abuse by military members of their contingents.

United Nations staff and experts on mission

84. The 1945 United Nations Conference on International Organization decided that personnel of the Organization would be immune from national jurisdiction only with respect to acts performed by them in their official capacity unless that immunity were waived by the United Nations.[9] That decision is reflected in Article 105, paragraph 2, of the Charter, which provides that officials shall "enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization". In paragraph 3 the General Assembly was authorized to make recommendations on the details of such privileges and immunities or to recommend a convention to Member States for that purpose. It chose the latter and formulated the Convention on the Privileges and Immunities of the United Nations, which came into force on 17 September 1946 and to which 141 States have acceded.

85. The Convention defines the privileges and immunities enjoyed by the Organization and its personnel. It follows the bedrock principle of functionality established in Article 105 of the Charter. The highest officials are granted, in addition to the privileges and immunities that cover their official duties, the privileges and immunities accorded to diplomatic envoys. But all officials, whether enjoying diplomatic or functional immunity, are subject to sections 20 and 21 of the General Convention. Section 20 provides that privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the officials themselves. It further provides that the Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. Section 21 provides that the Secretary-General shall at all times cooperate with the appropriate authorities to ensure the proper administration of justice and prevent the occurrence of any abuse in connection with those privileges and immunities. Section 23 deals with experts on mission in terms similar to those of section 20. Although the privileges and immunities of staff and experts differ in detail, all privileges and immunities relate to the official functions being performed by the official or expert.

86. The practice of the Secretary-General in implementing this provision is clear. If staff or experts on mission commit criminal acts in their duty station and the host

[9] United Nations Conference on International Organization, Commission IV, Judicial Organization (Doc. 228 (IV/2/10), p. 1). Chapter VII of the report of the Preparatory Commission of the United Nations dealt with privileges and immunities. It emphasized that privileges and immunities were for the benefit of the Organization and not the officials themselves. It stated that the Secretary-General would waive immunity in every case where such a course was consistent with the interest of the United Nations (PC/20, p. 62).

State seeks to prosecute, the Secretary-General will first make a determination as to whether the acts in question were performed in the course of official duties. If the acts were not performed in the course of official duties, the Secretary-General will inform the local authorities that no functional immunity exists. The model status-of-forces agreement broadly reflects this practice in respect of peacekeeping operations (see A/45/594, annex, para. 47 and 49). If the acts in question have some connection to official duties, such as driving of a United Nations vehicle, while drunk, or if the official enjoys the immunity of a diplomatic envoy and the host State seeks to prosecute, the Secretary-General must waive that immunity if the tests in sections 20 or 23 of the General Convention are satisfied, that is, where continued immunity would impede the course of justice and where immunity can be waived without prejudice to the interests of the United Nations. This policy, of course, must be rigorously applied in peacekeeping operations to acts of sexual exploitation and abuse that constitute crimes under the laws of the host State. But it must be remembered that not all the acts of sexual exploitation and abuse specified in the 2003 Secretary-General's bulletin constitute crimes under national law; for example, in many jurisdictions purchasing sex from prostitutes over the age of 18 is not a crime.

87. In the great majority of cases the application of the tests in the Convention is clear. What was not anticipated at the time the General Convention was drafted was that the United Nations would, on occasion, be operating in areas where there was no functioning legal system or where the legal system was so devastated by conflict that it no longer satisfied minimum international human rights standards. In such cases it would not be in the interests of the United Nations to waive immunity because its Charter requires it to uphold, promote and respect human rights. In other words, it would not be in the interest of the Organization for the Secretary-General to permit a staff member to be subjected to a criminal process that did not respect basic international human rights standards.

88. In such cases, making United Nations personnel criminally accountable depends upon whether another State has jurisdiction under its laws to prosecute. A number of States assert criminal jurisdiction over their nationals, but whether an effective prosecution can be launched depends on whether the offence is a crime under the law of the prosecuting State, whether sufficient evidence for prosecution under the applicable substantive and procedural law can be obtained and whether the prosecuting State can obtain custody of the accused. Whether those factors combine to enable prosecution is fortuitous. This is unsatisfactory. The intention of the Organization's founders to make United Nations personnel criminally accountable for their misdeeds may be thwarted.

89. It is not easy to devise a solution. It may be possible to develop an international convention that would subject United Nations personnel to the jurisdiction of States parties for specified crimes committed *by* such personnel (the Convention on the Safety of United Nations and Associated Personnel does this for specified crimes *against* United Nations personnel). The difficulty with this alternative is that it would apply only to the parties to the convention. Another possibility, at least for peacekeeping operations with a rule-of-law mandate from the Security Council, might be to try to get agreement with the host State when negotiating the status-of-forces agreement for the United Nations to provide assistance to the host State to ensure that criminal proceedings against United Nations personnel satisfied international human rights standards. The difficulty with

this alternative is that it would be seen as instituting two standards of justice: one for local inhabitants and one for international officials. This is not an attractive proposition. But at least there would be criminal accountability for acts of sexual exploitation and abuse committed by officials and experts on mission that constituted crimes under local law.

90. These are highly technical and complex legal matters. However, a serious effort is needed to address these shortcomings in accountability because the Charter envisaged that immunity would be functional, and crimes of sexual exploitation and abuse are not within the functions of any staff member or expert on mission. It is therefore recommended that the General Assembly ask the Secretary-General to appoint a group of experts to provide advice on the best way to proceed so as to ensure that the original intent of the Charter can be achieved, namely, that United Nations staff and experts on mission would never effectively be exempt from the consequences of criminal acts that they committed at their duty station. It is suggested that such a group would need experts on criminal law, extradition, mutual assistance in criminal matters, international human rights and United Nations privileges and immunities. It would also be vital for the group to have representatives of the Department of Peacekeeping Operations and the Office of Legal Affairs at their disposal to ensure that it properly took account of United Nations peacekeeping and legal practice. If the group advised that it would be feasible to draft an international instrument, the General Assembly could refer the matter either to the Sixth Committee or an ad hoc committee of the General Assembly specially created for that purpose.

Summary of recommendations

91. **Personnel who violate the standards set out in the 2003 Secretary-General's bulletin should be subjected to disciplinary action. The General Assembly should characterize breaches of the 2003 bulletin as "serious misconduct" under the Staff Regulations. Any staff members, civilian police or military observers who are found to have committed acts of sexual exploitation and abuse should have their appointments terminated. In addition, staff should be fined and the proceeds paid into the trust fund for victims. The Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers should be amended to permit similar action in respect of those categories of personnel. The model memorandum of understanding should be amended to enable the United Nations to deduct from future payments to the troop-contributing country the daily allowance paid to any soldier found culpable of sexual exploitation and abuse, to pay the proceeds to the trust fund for victims and to process claims for child support from victims in accordance with the laws of the troop-contributing country. The rules should be amended to compel staff and experts on mission to make child support payments.**

92. **The memorandum of understanding should specifically provide that members of contingents are required by the troop-contributing country to respect local laws. If acts of sexual exploitation and abuse by military members of peacekeeping missions constitute crimes, they should result in prosecution under the laws of the troop-contributing country. The model memorandum of understanding also ought to provide that if a Department of Peacekeeping Operations investigation is conducted and it is concluded that the allegations are well founded, the troop-contributing country is obligated to forward the**

case to its national authorities to be considered for prosecution under the laws of that country. Furthermore, it should provide that those authorities will take their decision in the same manner as they would in the case of an offence of a similar grave nature falling under the laws of the troop-contributing country and will report the outcome of the prosecution to the Secretary-General. It should also provide that if those authorities conclude that prosecution is not appropriate, the troop-contributing country agrees to submit to the Secretary-General a report explaining the reasons for that decision.

93. **The founders of the Organization did not intend that immunity would function to shield staff and experts on mission from national prosecution if they committed crimes in the host State. However the absence of a functioning judicial system in some peacekeeping locations requires long-term international cooperation to ensure that United Nations staff and experts on mission are not immune from criminal prosecution. It is recommended that the Secretary-General establish a group of experts to study the issue and make recommendations to the General Assembly on whether an international convention or other means could be used to ensure that United Nations staff and experts on mission who commit defined crimes in peacekeeping areas are held criminally accountable for their actions.**

VI. Conclusion

94. Recommendations for action on four broad fronts are set out in the present report. Rules against sexual exploitation and abuse must be unified for all categories of peacekeeping personnel. A professional investigative process must be established and modern scientific methods of identification must be utilized. A series of organizational, managerial and command measures must be instituted to address sexual exploitation and abuse. A number of recommendations are made to ensure that peacekeeping personnel who commit acts of sexual exploitation and abuse are held individually accountable through appropriate disciplinary action, that they are held financially accountable for the harm they have done to victims and that they are held criminally accountable if the acts constitute crimes under applicable law.

95. As noted at the outset of the present report, the record of United Nations peacekeeping and peacekeeper personnel is distinguished, and many have given their lives in the cause of peace. There will always be those who do not meet the established standards of conduct, however. Adoption of these recommendations will go a long way towards eliminating sexual exploitation and abuse in peacekeeping missions.

Annex

United Nations peacekeeping personnel: status and rules of conduct and discipline

United Nations staff

Status

A.1 United Nations staff members are appointed by the Secretary-General and are subject to his authority. All United Nations staff members, irrespective of whether they are internationally or locally recruited, with the exception of locally recruited employees hired on an hourly basis, have the status of officials under the Convention on the Privileges and Immunities of the United Nations (the General Convention). Section 18 of the General Convention provides that officials are immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Section 19 provides that officials at the level of Assistant Secretary-General and above have the privileges and immunities of diplomatic envoys in accordance with international law.

A.2 In peacekeeping operations the General Convention is supplemented by the status-of-forces agreement. Although each status-of-forces agreement is tailored to the specific needs of a particular mission, they are all based on the model status-of-forces agreement presented to the General Assembly on 9 October 1990 (A/45/594, annex). Paragraph 6 of the model status-of-forces agreement provides that all local laws and regulations are to be respected. The model was implicitly endorsed by the Assembly in its resolution 52/12 B[a] of 19 December 1997 and has been applied in numerous Security Council resolutions.[b] Current status-of-forces agreements provide that the most senior officials in the mission — the Special Representative of the Secretary-General or head of mission, the Force Commander and such other high-ranking members as may be agreed between the United Nations and the host State — are granted the privileges and immunities of diplomatic envoys in accordance with international law. The status-of-forces agreements provide that civilian staff members of the United Nations assigned to the mission have the status of officials under the General Convention (since not all Member States have acceded to the General Convention).

A.3 Requests for waiver of immunity are usually made to the Secretary-General by the competent authorities of Member States through their permanent missions to the United Nations or, under the status-of-forces agreements, to the head of mission.

[a] The General Assembly, in paragraph 7 of the resolution, endorsed the recommendation that the Security Council, in establishing a peacekeeping operation in the future, should prescribe a time frame for the conclusion of the status-of-forces agreement between the United Nations and the host Government for the operation in question and that, pending the conclusion of such an agreement, a model-status-of-forces agreement would apply provisionally unless otherwise agreed by the parties, and invited the Security Council to consider the matter.

[b] For example, the following recent Security Council resolutions provide that, pending the signature of a status-of-forces agreement, the model status-of-forces agreement shall apply: paragraph 9 of resolution 1528 (2004) (United Nations Operation in Côte d'Ivoire); paragraph 11 of resolution 1542 (2004) (United Nations Stabilization Mission in Haiti); and paragraph 10 of resolution 1545 (2004) (United Nations Operation in Burundi).

The Secretary-General decides upon such requests on the advice of the Office of Legal Affairs, having regard to the criteria set out in section 20 of the General Convention. That section provides that the privileges and immunities of officials are granted in the interests of the United Nations and not for the personal benefit of the officials themselves. It further provides that the Secretary-General has the right and duty to waive the immunity of any official if, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. For example, if a staff member was criminally prosecuted for a traffic accident caused by his or her drunken or grossly negligent driving of a United Nations vehicle, the Secretary-General could decide that immunity would impede the course of justice and conclude that waiver of immunity would not adversely affect any United Nations interests. In such a case immunity would be waived. On the other hand, if the Secretary-General determined that there was no basis for the allegation or that the staff member had been properly performing his or her duties, immunity would be maintained. In either case, any injured third parties would be told to make any claim that they had against the United Nations, where it would be dealt with in accordance with established procedures for the settlement of disputes.[c]

A.4 The functional immunity of staff extends only to the performance of official duties. Under the General Convention, a decision as to whether a staff member was performing official duties is for the Secretary-General to make, acting on the advice of the Office of Legal Affairs. The model status-of-forces agreement contains provisions enabling the head of mission to make a preliminary determination as to whether a suit against a member of the mission relates to official duties. That decision is normally made after consultation with the Office of Legal Affairs.

A.5 Paragraph 49 of the model status-of-forces agreement deals with civil actions. It empowers the head of mission to certify whether the proceeding is related to official duties. If so, the proceedings must be immediately discontinued. However, such claims, if not settled, may be brought against the Organization in accordance with the Organization's procedures established for the settlement of disputes (as noted in para. A.3 above). If the proceedings are not related to official duties, for example a lawsuit for rent of private premises, the proceedings may continue because officials, except certain designated senior officials, have functional immunity, which does not extend to private actions of the individual concerned. As noted in paragraph A.2 above, designated senior officials have the privileges and immunities of diplomatic envoys and the Secretary-General would have to waive their privileges and immunities before any civil action could continue.

A.6 Paragraph 47 of the model status-of-forces agreement deals with criminal acts. For officials who have functional immunity, it envisages an enquiry by the head of mission as to whether the act in question was performed in the course of official duties leading to an agreement with the host State on whether the proceedings may continue. It is important to emphasize that such determinations by the head of mission do not constitute a waiver of immunity, which is a decision for the Secretary-General to make. The decisions of the head of mission are determinations as to whether the acts in question were performed in the course of official duties, which is a prerequisite for immunity from national courts. Normally such

[c] The administrative procedures for handling third-party claims against members of United Nations peacekeeping operations are described in a report of the Secretary-General to the General Assembly dated 20 September 1996 (A/51/389, paras. 20-37).

determinations are made in consultation with the Office of Legal Affairs because, even if a matter relates to private activities, national courts usually require a written waiver of privileges and immunities from the United Nations to ensure that the question cannot arise during criminal proceedings.

A.7 Procedures exist under both the General Convention and the model status-of-forces agreements for the settling of differences of opinion on such matters between the Member State concerned and the Secretary-General.

Rules of conduct

A.8 At the time of appointment, each staff member must sign a letter of appointment that provides that he or she agrees to be bound by the United Nations Staff Regulations and Rules and instructions issued pursuant to them.

A.9 The Charter of the United Nations envisages that staff shall have the highest standards of integrity (Article 101, para. 3). The conduct of staff members is regulated by article 1 of the Staff Regulations and chapter 1 of the Staff Rules, reproduced in the Secretary-General's bulletin entitled "Status, basic rights and duties of United Nations staff members" (ST/SGB/2002/13). The text contains a number of general provisions that would prohibit staff from engaging in acts of sexual exploitation and abuse. For example, regulation 1.2 (b) requires staff to uphold the highest standards of integrity; regulation 1.2 (f) requires staff to always conduct themselves in a manner befitting their status as international civil servants; rule 101.2 (c) requires staff to observe local laws and honour their private obligations; and rule 101.2 (d) prohibits any form of sexual or gender harassment. Identical provisions apply to staff appointed under the 200 series (project personnel) and 300 series (short-term appointments and appointments of limited duration) of the Staff Rules. The Staff Regulations and Rules are binding on staff.

A.10 The bulletin also includes the text of "Standards of conduct for the international civil service", adopted by the International Civil Service Commission in 2001 and welcomed by the General Assembly in its resolution 56/244 of 24 December 2001. The standards of conduct are general guidelines for staff on expected standards of conduct, rather than binding rules.

A.11 Pursuant to General Assembly resolution 57/306 of 15 April 2003, on the investigation into sexual exploitation of refugees by aid workers in West Africa, the Secretary-General promulgated specific prohibitions against sexual exploitation and abuse that are binding on staff. They are set out in the Secretary-General's bulletin entitled "Special measures for protection from sexual exploitation and sexual abuse" (ST/SGB/2003/13). In the bulletin, the Secretary-General defines "sexual exploitation" and "sexual abuse" (sect. 1); provides that engaging in those defined acts is serious misconduct which, under the Staff Regulations, constitutes grounds for disciplinary measures, including summary dismissal (sect. 3.2 (a)); prohibits sexual activity with children (defined as persons under the age of 18 years) (sect. 3.2 (b)); prohibits the exchange of money, employment, goods, services or assistance for sex (sect. 3.2 (c)); discourages relationships between staff and recipients of assistance (sect. 3.2 (d)); obligates staff to report concerns or suspicions regarding violations of the provisions of the bulletin (sect. 3.2 (e)); and obligates managers to support and develop systems that create an environment free of sexual exploitation and abuse (sect. 3.2 (f)).

Rules of discipline

A.12 Staff members who are alleged to have committed misconduct are subject to the disciplinary mechanisms established by the Staff Regulations and Rules. They are granted the due process protections set out in chapter X of the Staff Rules and in the administrative instruction of 2 August 1991 entitled "Revised disciplinary measures and procedures" (ST/AI/37). The basic premise behind the due process procedures is that allegations are simply allegations. In other words, the presumption is that a staff member has complied with the prescribed standards of conduct. Misconduct must be established by the Administration.

A.13 That Administrative instruction provides that if there is reason to believe that a staff member has violated the standards of conduct, the head of mission must undertake a preliminary investigation.[d] If that preliminary investigation indicates that the allegation of misconduct is well founded, the preliminary investigation and copies of any documentary evidence are sent to the Assistant Secretary-General for Human Resources Management, who decides whether to pursue the matter. If the case is pursued, the staff member is formally charged in writing with violating a specific rule or standard of conduct and is informed why the Assistant Secretary-General considers that the evidence justifies the charge. The staff member is given a reasonable amount of time to respond in writing to the charge. The entire dossier, including the staff member's reply and any evidence that he or she cares to submit, is reviewed by the Assistant Secretary-General, who decides whether to drop the case, submit it to a Joint Disciplinary Committee or, if there is serious misconduct and the evidence is clear, recommend summary dismissal to the Secretary-General. If a case is referred to a Joint Disciplinary Committee, it hears the parties and then submits its report and recommendation to the Secretary-General, who takes a final decision. The Secretary-General may decide to take no action against the staff member and close the case or he may impose one or more of the penalties specified in staff rule 110.3 (a).[e] A staff member dissatisfied with that decision may appeal to the United Nations Administrative Tribunal.

[d] Administrative instruction ST/AI/371 was issued prior to the establishment of the Office of Internal Oversight Services (OIOS) by the General Assembly in its resolution 48/218 B of 29 July 1994. Under its mandate, OIOS may conduct investigations into reports of violations of United Nations regulations, rules and pertinent administrative issuances. The mandate of OIOS permits the Secretary-General to request it to carry out investigations. OIOS investigations are under the control and direction of OIOS and are treated as preliminary investigations for disciplinary purposes.

[e] Staff rule 110.3 (a) provides that disciplinary action may take one or more of the following forms: written censure by the Secretary-General; loss of one or more steps in grade; deferment of a within-grade increment for a specified period; suspension without pay; fine; demotion; separation from service with or without notice of separation or compensation in lieu thereof; and summary dismissal.

United Nations civilian police and military observers

Status

A.14 Paragraph 26 of the model status-of-forces agreement provides that military observers and United Nations civilian police shall be considered as experts on mission within the meaning of the General Convention.[1]

A.15 Experts on mission are accorded by section 22 of the General Convention the privileges and immunities necessary for the discharge of their functions, including immunity from personal arrest and detention and seizure of their baggage, immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission and inviolability in respect of all papers and documents.

A.16 Paragraph 6 of the model status-of-forces agreement provides that all members of a peacekeeping operation shall respect all local laws and regulations. The provisions in the model status-of-forces agreement dealing with civil and criminal suits apply to members of the mission who have the status of experts on mission (see paras. A.4-A.7 above). Section 23 of the General Convention deals with waiver of privileges and immunities of experts on mission. It is in substance identical to section 20, which covers United Nations staff. The General Convention and regulation 1 (e) of the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (ST/SGB/2002/9) make it clear that the Secretary-General applies the same considerations to both staff and experts on mission when deciding whether to waive their immunity.

Rules of conduct

A.17 The General Assembly, by its resolution 56/280 of 27 March 2002, adopted the above-mentioned standards of conduct for United Nations experts on mission. They apply to both civilian police and military observers serving as experts on mission for the United Nations. There are a number of general provisions that would prohibit experts on mission from engaging in acts of sexual exploitation and abuse. For example, regulation 2 (a) requires experts on mission to uphold the highest standards of integrity; regulation 2 (d) requires them to conduct themselves in a manner befitting their status; regulation 2 (j) requires them to observe local laws and honour their private obligations; and regulation 2 (k) prohibits any form of sexual or gender harassment.

A.18 On appointment, both civilian police and military observers sign an "undertaking" in which they agree to comply with all mission standard operating and administrative procedures, policies, directives and other issuances. Among

[1] In practice, the United Nations treats military liaison officers and military staff officers as experts on mission. In the early years of peacekeeping, this was expressly stated in some status-of-forces agreements. For example, see paragraph 25 of the exchange of letters constituting an agreement between the United Nations and the Government of Egypt concerning the status of the United Nations Emergency Force of 8 February 1957 and the status-of-forces agreement with Egypt (United Nations, *Treaty Series*, vol. 260, p. 61); see also paragraph 25 of the exchange of letters constituting an agreement between the United Nations and the Government of Cyprus concerning the status of the United Nations Peacekeeping Force in Cyprus of 31 March 1964 (ibid., vol. 492, p. 57).

those issuances are the publications entitled "Ten Rules: Code of Personal Conduct for Blue Helmets" and "We Are United Nations Peacekeepers", which are distributed to all United Nations peacekeeping personnel. Those texts are also reproduced in the mission-specific guidelines for civilian police officers that are provided to each police-contributing country and in the military observer guidelines, which are forwarded to each military observer through the office of Chief Military Observer in the mission concerned. This document is also provided to troop-contributing countries.

A.19 The Ten Rules and We Are United Nations Peacekeepers publications regulate conduct in general terms. Rule 4 of the Ten Rules is: "Do not indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population or United Nations staff, especially women and children."

A.20 The civilian police guidelines contain detailed provisions on the conduct of civilian police. The guidelines provide, inter alia, that civilian police shall not abuse or exploit the local population, in particular women and children. They require that civilian police officers show respect and courtesy towards all. The guidelines for military observers are set out in similar terms.

A.21 From mid-2004, the Department of Peacekeeping Operations, in its mission-specific directives for police commissioners, has started to summarize the rules contained in the 2003 Secretary-General's bulletin and apply them to civilian police officers. The standards in that bulletin have not yet been made specifically applicable to military observers.

Rules of discipline

A.22 Civilian police and military observers who are alleged to have committed an act of serious misconduct are subject to the procedures set out in the Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers, which are distributed to police-contributing countries with the mission-specific guidelines for civilian police officers. In the Directives (para. 4), the definition of "serious misconduct" (which differs from the meaning of the term in the Staff Regulations and Rules), includes sexual exploitation and abuse, as does the 2003 Secretary-General's bulletin in respect of staff.

A.23 As is the case for United Nations staff, the basic premise behind the due process procedures established by the Directives is that allegations are simply allegations. In other words, the presumption is that civilian police officers and military observers have complied with the prescribed standards of conduct. Serious misconduct must be established by the mission.

A.24 As is also the case for United Nations staff, the first step in the process is that if there is reason to believe that a civilian police officer or a military observer has committed serious misconduct, the head of mission must immediately undertake a preliminary investigation. If that preliminary investigation indicates that the report of serious misconduct is well founded, a board of inquiry is convened and the head of mission informs the Department of Peacekeeping Operations at Headquarters of the results of the preliminary investigation. The head of mission may recommend to the Department that the individual concerned be repatriated on the basis of the findings of the preliminary investigation. The Department then informs the permanent mission of the State concerned.

A.25 The purpose of the board of inquiry is to establish facts, not to act as an adjudicatory body. It is a management tool to assist the head of mission in discharging his or her responsibilities to prevent misconduct in the mission. The board shall be convened within 48 to 72 hours after the findings of the preliminary investigation. The Directives contain detailed procedures to protect the due process rights of the civilian police officer or military observer concerned.

A.26 The board of inquiry reports to the head of mission, who is responsible for taking a final decision. The Directives establish a range of penalties that may be imposed by the head of mission if he or she determines that an act of serious misconduct has occurred.* The head of mission can recommend to the Department of Peacekeeping Operations that the individual be repatriated on the basis of the findings of the board of inquiry (as noted in para. A.24 above, the head of mission may also make such a recommendation on the basis of the findings of the preliminary investigation). If the Department decides to repatriate the individual, the permanent mission of the Member State concerned is notified. The expenses of the repatriation are borne by the Member State.

Members of national military contingents

Status

A.27 The model status-of-forces agreement provides that all local laws and regulations are to be respected (para. 6); that military members of the military component of the mission shall have the privileges and immunities set out in the agreement (para. 27); and that members of peacekeeping operations shall be subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offences committed in the host State (para. 47 (b)). Because there is no possibility of host State jurisdiction over military members of national contingents, the model agreement provides that the Secretary-General will obtain assurances from Governments of participating States that they will be prepared to exercise jurisdiction with respect to crimes or offences which may be committed by members of their national contingents serving with the peacekeeping operation (para. 48). The model agreement envisaged that that provision would be inserted into the memorandums of understanding, however, no such provision is included in the model memorandum of understanding (see A/51/967, annex, and Corr.1 and 2), although it was in some early memorandums of understanding (see para. 78 of the present report).

A.28 The model status-of-forces agreement provides that if a civil proceeding is instituted against a member of a peacekeeping operation in the host State it will be discontinued if the head of mission certifies that the proceeding is related to official duties. If the head of mission certifies that it is not related to official duties, the civil

* The Directives enable the head of mission to impose one or more of the following penalties: removal from a position of command; redeployment to another position/area after retraining, if necessary; removal of benefits and concessions provided to United Nations personnel; suspension of leave/compensatory time off; full or partial recovery from mission subsistence allowance, in cases of financial loss to the United Nations; recommendation to repatriate; and written censure or reprimand, including a possible recommendation for non-eligibility for any future assignment with the United Nations (para. 23).

suit may continue. However, the personal liberty of a member of the peacekeeping operation shall not be restricted as a result of such civil proceedings (para. 49).

A.29 Procedures exist under the status-of-forces agreement for the settling of differences of opinion on such matters between the host State and the Secretary-General.

Rules of conduct

A.30 The model status-of-forces agreement provides that the Special Representative of the Secretary-General shall take all appropriate measures to ensure the maintenance of discipline and good order among members of the United Nations peacekeeping operation (para. 40). Military members of national contingents are subject to the standards of conduct set out in the Ten Rules and in We Are United Nations Peacekeepers (see paras. A.18 and A.19 above). Those documents are distributed to all United Nations peacekeeping personnel and are reproduced in the mission-specific guidelines for troop-contributing countries deploying military units that are sent to the troop-contributing country concerned.

A.31 The guidelines include detailed provisions on the conduct of members of the contingent concerned. They provide, inter alia, that members of military contingents shall not abuse or exploit individual members of the local population, in particular women and children, and that they are to show respect and courtesy towards the population. Since the promulgation of the 2003 Secretary-General's bulletin, the rules contained therein have begun to be summarized in the guidelines and applied to members of national contingents.

Rules of discipline

A.32 Military members of a national contingent who are alleged to have committed an act of "serious misconduct" (a defined term that includes sexual exploitation and abuse) are subject to the mission procedures set out in the Directives for Disciplinary Matters Involving Military Members of National Contingents, which are made available to troop-contributing countries. They are, of course, always subject to procedures instituted by their national contingents.

A.33 Section 2.2 of the 2003 Secretary-General's bulletin, while not applicable per se to members of national contingents, notes that United Nations forces under United Nations command and control are prohibited from committing any acts of sexual exploitation and abuse and have, in particular, a duty of care towards women and children, pursuant to section 7 of Secretary-General's bulletin ST/SGB/1999/13, entitled "Observance by United Nations forces of international humanitarian law". Section 1.1 of that bulletin provides that the rules set out therein are applicable to United Nations forces when in situations of armed conflict they are actively engaged as combatants, to the extent and for the duration of their engagement, and thus are applicable in enforcement actions or in peacekeeping operations when the use of force is permitted in self-defence. In section 7.2, rape, enforced prostitution and any form of sexual assault and humiliation are specifically prohibited. Section 7.4 provides that children shall be the object of special respect and shall be protected from any form of indecent assault.

A.34 The mission procedures for a preliminary investigation and a board of inquiry to investigate allegations of serious misconduct against members of national

contingents are in substance identical to the procedures set out in the Directives described in paragraphs A.22 to A.26 above. As is the case for civilian police and military observers, the head of mission can only recommend repatriation, which must be decided by the Department of Peacekeeping Operations at Headquarters based on the recommendation of the head of mission. If the Department decides on repatriation, the permanent mission of the troop-contributing country concerned is notified and the expenses of the repatriation are borne by the troop-contributing country concerned.

A.35 It must be emphasized that the decision to repatriate a member of a national contingent is an administrative measure, not a disciplinary sanction. Discipline of a military member of a national contingent is a matter exclusively for the troop-contributing country concerned.

United Nations Volunteers

Status

A.36 In recent years, status-of-forces agreements entered into by the Organization have provided that United Nations Volunteers are considered to have the status of officials under the General Convention. They thus have the privileges and immunities of staff in the host State (see paras. A.1-A.7 above).

Rules of conduct

A.37 United Nations Volunteers are bound by the United Nations Volunteers programme's rules of conduct. Those rules provide that Volunteers must respect the laws, moral codes and traditions prevailing in the host State and must refrain from any activity that is incompatible with the aims and objectives of the United Nations.

Rules of discipline

A.38 United Nations Volunteers are subject to immediate dismissal for violations of the rules of conduct. The Department of Peacekeeping Operations will advise missions to require Volunteers to sign an agreement that they acknowledge that any violation of the prohibitions against sexual exploitation and abuse contained in the 2003 Secretary-General's bulletin will constitute serious misconduct that could result in immediate repatriation.

A.39 In the event that a Volunteer disputes an administrative decision of the Organization, the conditions of contract provide that the dispute will be submitted to arbitration and that the award of the arbitration panel will be accepted by the parties as the final resolution of the dispute.

Individual contractors

Status

A.40 Peacekeeping missions may retain the services of individual consultants or contractors pursuant to standard conditions of contract that are specified in the administrative instruction entitled "Consultants and individual contractors" (ST/AI/1999/7). Consultants have specialized skills not available in the Secretariat.

Individual contractors may perform functions similar to staff but for short periods of time. The administrative instruction provides that consultants and individual contractors have the status of neither staff members nor experts on mission; they are subject to local law. However, consultants may be accorded the status of experts on mission if they are required to travel on behalf of the Organization. The privileges and immunities of experts on mission are described in paragraphs A.15 and A.16 above.

Standards of conduct

A.41 Contracts for consultants and individual contractors provide, inter alia, that the holders must refrain from any conduct that would adversely reflect on the United Nations and that they must undertake to not engage in any activity that is incompatible with the aims and objectives of the Organization.

Rules of discipline

A.42 The standard contracts for consultants and individual contractors provide that failure to conform to the standards of conduct specified therein shall lead to termination of the contract at the initiative of the United Nations. The Department of Peacekeeping Operations will advise missions to broaden this provision to include specific reference to violations of the prohibitions against sexual exploitation and abuse contained in the 2003 Secretary-General's bulletin.

A.43 The standard contracts provide that in the event that a consultant or individual contractor disputes a decision of the United Nations, the dispute will be submitted to arbitration and the award of the arbitration panel will be accepted by the parties as the final resolution of the dispute.